

Issue: Group II Written Notice with Suspension (failure to follow instructions/policy, and falsifying records); Hearing Date: 02/11/16; Decision Issued: 02/17/16; Agency: UVA; AHO: John R. Hooe, III, Esq.; Case No. 10722; Outcome: No Relief – Agency Upheld.

**COMMONWEALTH OF VIRGINIA
Department of Employment Dispute Resolution**

**DIVISION OF HEARINGS
DECISION OF HEARING OFFICER**

In the matter of: Case No. 10722

Hearing Date: February 11, 2016
Decision Issued: February 17, 2016

PRELIMINARY MATTERS

Upon being appointed as the Hearing Officer in this matter, effective November 23, 2015, the Hearing Officer arranged a pre-hearing telephone conference which was conducted on December 1, 2015. The telephone pre-hearing conference was conducted with the Grievant and Agency representative. At that time, the grievance hearing was scheduled to be conducted on January 15, 2016.

The Hearing Officer received an email on January 6, 2016 from an attorney advising that she would be representing the Grievant and requested that the hearing be postponed. By agreement with the attorney and the Agency representative, the hearing was rescheduled for February 11, 2016 with all exhibits a party intends to introduce at the hearing and a list of witnesses to be called to be provided to the Hearing Officer and to the other party no later than February 4, 2016, all as set out in the Hearing Officer's letter dated January 14, 2016.

The Hearing Officer received an email dated January 19, 2016 from Grievant's attorney advising that she would not be able to represent the Grievant due to a medical emergency. As a result, the Hearing Officer conducted a pre-hearing telephone conference with the Grievant and the Agency representative on February 1, 2016 at which time the Grievant elected to represent herself and keep the scheduled February 11, 2016 hearing date. During the pre-hearing telephone conference the Hearing Officer ruled on the items set out in the Grievant's document request list.

APPEARANCES

Grievant
Representative for Agency
Advocate for Agency

The Agency called Grievant's Supervisor, the Associate Dean and the Senior Fiscal Technician

In addition, the Agency Advocate proffered the testimony of the Administrative Manager for Associate Dean, which was agreed to by the Grievant.

The Grievant called the ROMAC Director and the Associate Director of ROMAC. The Grievant also testified on her own behalf.

ISSUES

1. Did the Grievant fail to follow instructions or policy?
2. Did the Grievant falsify records?
3. If so, was the Grievant's conduct a violation of the Standards of Conduct Policy 1.60?
4. If so, was the Grievant's conduct a Group II Offense under the Standards of Conduct and was the discipline in accordance with the Standards of Conduct?

EXHIBITS

The Agency Exhibits admitted into evidence are contained in two notebooks with the following contents:

- Tab 1 - Grievant's Form A
- Tab 2 - Group II Notice dated 10/6/15
Resend the Notice dated 8/19/15
- Tab 3 - Article dated 2/12/13
- Tab 4 - Overview of internal controls
FIN-021 Internal Control
FIN-023 Reconciling Department Accounting Records
Email dated 12/1/15

- Email dated 10/10/15
 - Email dated 1/7/16
- Tab 5 - Photo of files and email
 - Email from Grievant dated 7/29/15
 - Email dated 8/5/15
 - Email Grievant's Supervisor dated 9/10/15
- Tab 6 - Recon Report for Grievant dated January 2015 - June 2015 and email
- Tab 7 - January detail transaction 103178, 13577, 146507
- Tab 8 - January detail transaction 133577
- Tab 9 - February detail transactions 133577, 146607
- Tab 10 - February detail transaction 133577
- Tab 11 - March detail transactions 133577, 146607
- Tab 12 - March detail transaction 133577
- Tab 13 - April detail transactions 133577, 146607
- Tab 14 - April detail transaction 133577
- Tab 15 - May detail transactions 133577, 146607
- Tab 16 - May detail transaction 133577
- Tab 17 - June detail transactions 133577, 146607
- Tab 18 - June detail transaction 133577
 - Kroger receipt
- Tab 19 - Emails and documents from 2014
 - Performance Evaluation 2014
- Tab 20 - Emails and documents from 2013
 - Performance Evaluation 2013
- Tab 21 - Training transcript
 - Job description
- Tab 22 - Recon Training
- Tab 23 - Mastering Account Reconciliations
- Tab 24 - Internal Controls
- Tab 25 - Business Administration
- Tab 26 - Standards of Conduct
- Tab 27 - Super Temps

The Grievant's Exhibits admitted into evidence (with the exceptions noted) are contained in a single notebook with the following contents:

- Tab 1 - Grievant's Procedure Manual
- Tab 2 - Grievant's Forms with attachments and emails
- Tab 3 - Grievant's Forms with attachments and emails
- Tab 4 - Emails regarding purchasing and accounts payable workshop
- Tab 5 - Emails regarding RECON & Purchasing Card/8/5/15 Meeting and Response
- Tab 6 - Purchasing card statements/RECON Reports January-July 2015/Email 8/12/15

- Tab 7 - August 2015 RECON/Emails
- Tab 8 - September 2015 RECON/Emails
- Tab 9 - October 2015 RECON/Emails
- Tab 10 - November 2015 RECON/Emails (not admitted into evidence)
- Tab 11 - December 2015 RECON
- Tab 12 - Supervisor's Job Responsibilities
- Tab 13 - Roles R & Classes
- Tab 14 - 2013 Performance Review
- Tab 15 - Position posting
- Tab 16 - 2014 Performance Review
- Tab 17 - 2015 Performance Review incomplete (not admitted into evidence)
- Tab 18 - Various emails December 2015-February 2016 (not admitted into evidence)
- Tab 19 - Letter from Undergraduate and Graduate Coordinator (not admitted into evidence)

FINDINGS OF FACT

The Agency witness Senior Administrative Assistant and Grievant's supervisor, testified that she supervised three staff members including the Grievant. The Grievant, an Administrative Assistant for ROMAC (Rotating Machinery And Controls Consortium) reported to the Supervisor beginning in the period of May-June 2014. In addition to other responsibilities, the Grievant was responsible for reconciling three expense accounts. The automated reconciliation system had been in place since 2012. The Supervisor testified that the Grievant had training and experience with the automated reconciliation system in her previous position as Executive Assistant. The Supervisor pointed out that the Grievant was described in a biography dated March, 2012 as a "super temp", a temporary employee with expertise in "reconciling expense reports..." (Agency Exhibit 27).

The Supervisor testified that on July 29, 2015, while the Grievant was on vacation, the Supervisor needed a voucher from the Grievant's monthly reconciliation files. When the Supervisor could not find the needed voucher, she discovered that the Grievant did not have any reconciliation files containing receipts past the month of December, 2014. However, the Supervisor testified that the Grievant had indicated through the automated reconciliation system that she had in fact reconciled the three accounts (i.e. compared hard copy vouchers and receipts with the claimed expense) for the period from January 1, 2015 through June 30, 2015. The Supervisor testified that it is extremely important that the reconciliation policy be followed so as not to damage the reputation of the department, especially in light of a recent scandal involving the former director of ROMAC (Agency Tab 3).

The witness testimony and the exhibits offered by the Agency indicate that Agency Policy FIN-021: Internal Control require that the reconciler (i.e. the Grievant) must certify that all charges to the accounts are supported by "documentation filed in your department...(and) all

required electronic signatures must be recorded by the fifteenth calendar day of the month.” (Agency Tab 4)

The Agency demonstrated through exhibits and through a demonstration by Agency witness Senior Fiscal Technician the procedure followed on the computer by which the reconciler (i.e. the Grievant) marks a box to indicate that the reconciler has in file a hard copy receipt or voucher for the line item expense (Agency Tabs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18).

The Supervisor testified that when she went to the Grievant’s work area to retrieve a voucher, the Supervisor found the reconciliation files (containing receipts and vouchers) for the months of June-December, 2014 (shown in photo at Tab 5) but none for 2015.

The Agency’s evidence, namely the testimony of the Supervisor supported by the Agency exhibits demonstrated that on multiple occasions the Grievant clicked the box on the computer program indicating that Grievant had reconciled the account when in fact the Grievant had not reconciled the account. The Supervisor and the Agency Advocate emphasized how damaging this action by the Grievant can be. When the Grievant clicks the box indicating the account has been reconciled, that information is conveyed to the “approver” who relies upon this representation by the reconciler to approve the payment of the claimed expense. The Supervisor testified that the Grievant had ample training in the automated reconciliation process (Agency Tabs 21, 22, 23, 24 and 25).

Agency witness Associate Dean, testified that the “approver” does not confirm that the reconciliation has “in fact, taken place before relying upon the indication that the reconciliation has in fact taken place.” The Associate Dean further testified that he preferred that the Grievant receive a Group II rather than a Group III because the Grievant did not personally benefit from her failure to follow policy and her falsification of records.

The Supervisor testified that the Grievant was given the Written Notice of a Group II Offense, with a three day suspension, based on the failure to follow the reconciliation policy and the falsification of records by indicating that the accounts had in fact been reconciled. (Agency Tab 1). The Supervisor testified that the act of falsifying records could also be considered a Group III Offense resulting in termination but termination of the Grievant’s employment was not supported by the other members of the management team who chose to mitigate the Grievant’s punishment due to her otherwise good work record.

Agency witness Associate Dean, testified that the approver does not confirm that the reconciliation has “in fact, taken place before relying upon the indication that the reconciliation has in fact taken place.” The Associate Dean further testified that he preferred that the Grievant receive a Group II rather than a Group III because the Grievant did not personally benefit from her failure to follow policy and the Grievant’s falsification of records.

The Grievant testified that no concerns were expressed about her job performance in her 2013 and 2014 performance evaluations. The Grievant testified that any concerns regarding

her performance in reconciling accounts was not shared with her and no corrective action was taken prior to the Group II Written Notice being issued. When asked about the absence of file folders (for receipts and vouchers) for 2015, the Grievant admitted that the Grievant did not have files. She testified that she had another file that had “various receipts and vouchers.” The Grievant admitted that on a number of occasions the Grievant clicked the box on the computer program indicating that the Grievant had reconciled the expense account when the Grievant in fact had not reconciled the expense account, thereby certifying to the approver that payment of the expense is justified. However, the Grievant testified that the reason the Grievant clicked the box was because her supervisor had told the Grievant if you don’t have the receipt or voucher just “click through.” The Supervisor when called as a rebuttal witness testified that she never told the Grievant to “click through” or otherwise advised to indicate that the Grievant had reconciled an expense account when the Grievant had in fact not reconciled the account. The Grievant also called as witnesses the ROMAC Director, and the Associate Director of ROMAC who essentially testified that there had been no discussion of any alternatives to the Group II Written Notice with suspension and that they believed the Grievant was an otherwise valuable employee.

APPLICABLE LAW AND OPINION

The General Assembly enacted the Virginia Personnel Act, Va. Code § 2.2-2900 et. seq., establishing the procedures and policies applicable to employment within the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee’s ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and workplace. *Murray v. Stokes*, 237 Va. 653, 656 (1989).

Code § 2.2-3000 (A) sets forth the Commonwealth’s grievance procedure and provides, in pertinent part:

It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints.....

To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

Standards of Conduct, Policy 1.60 states as follows:

No. 2. Written Notices

When counseling has failed to correct misconduct or performance problems, or when an employee commits a more serious offense, management should address

the matter by issuing a Written Notice. ...

No. 2b. Group II Offense:

Offenses in this category include acts of misconduct or more serious and/or repeat nature that require formal disciplinary action. This level is appropriate for offenses that significantly impact business operations and/or constitute neglect of duty, insubordination, the abuse of state resources, violations of policies, procedures, or laws.

- Active Life of Notice: Three years from its date of issuance to the employee.
- Suspension Options: Suspension of up to ten work days...for the first Group II Offense.

DECISION

The disciplinary action of the Agency is upheld.

The Agency proved by a preponderance of the evidence that the Grievant intentionally failed to follow Policy FIN-023 Reconciling Departmental Accounting Records and FIN-021 Internal Controls. The evidence also established that the Grievant falsified records by signing off on reconciliation even though the Grievant did not on more than one occasion actually compare receipts with expense items. Each of the Grievant's actions was in violation of the Standards of Conduct Policy: 1.60. Each is a Group II Offense "that significantly...impact business operations and/or constitute a neglect of duty, insubordination, the abuse of state resources, violations of policies, procedures, or laws. In fact, the Grievant's actions could have been considered a Group III Offense a category intended "for ...illegal or unethical conduct...". In that the Standards of Conduct provide for a suspension of up to ten work days for the first Group II Offense, the three day suspension is appropriate.

The Written Notice with an active life of three years, together with the suspension of three unpaid work days is in accordance with the applicable policy procedures.

APPEAL RIGHTS

A hearing decision must be consistent with law, policy, and the grievance procedure (including the Grievance Procedure Manual and the Rules for Conducting Grievance Hearings). A hearing decision is subject to administrative and judicial review. Once the administrative review phase has concluded, the hearing decision becomes final and is subject to judicial review.

Administrative Review: This decision is subject to administrative review by both EDR and the DHRM Director based on the request of a party. Requests for review may be initiated by electronic means such as facsimile or email. However, as with all aspects of the grievance procedure, a party may be required to show proof of timeliness. Therefore, parties are strongly encouraged to retain evidence of timeliness. A copy of all requests for administrative review must be provided to the other party, EDR and the Hearing Officer.

Important Note: Requests for administrative review must be in writing and received by the reviewer within fifteen calendar days of the date of the original hearing decision. "Received by" means delivered to, not merely post-marked or placed in the hands of a delivery service.

Requesting Administrative Review:

1. **A challenge that the hearing decision is inconsistent** with state or agency policy is made to the Director of the Department of Human Resources Management. This request must refer to a particular mandate in state or agency policy with which the hearing decision is not in compliance. The director's authority is limited to ordering the Hearing Officer to revise the decision to conform it to written policy. Requests must be sent to the Director of the Department of Human Resources Management, 101 North Fourteenth Street, 12th Floor, Richmond, Virginia 23219 or fax to 804-786-1606 or emailed.
2. **A challenge that the hearing decision is not in compliance with the grievance procedure (including the Grievance Procedure Manual and the Rules for Conducting Grievance Hearings)**, as well as a request to present newly discovered evidence, is made to EDR. This request must refer to a specific requirement of the grievance procedure with which the hearing decision is not in compliance. EDR's authority is limited to ordering the Hearing Officer to revise the decision so that it complies with the grievance procedure. Requests must be sent to the office of Employment Dispute Resolution, 101 North Fourteenth Street, 12th Floor, Richmond, Virginia 23219 or fax to 804-786-0111 or emailed.

In response to any requests for administrative review, the opposing party may submit a written challenge (rebuttal) to the appropriate reviewer. If the opposing party chooses to submit a rebuttal, it must be received by the reviewer within ten calendar days of the conclusion of the original fifteen day appeal period. A copy of any such rebuttal must also be provided to the appealing party, EDR, and the Hearing Officer.

Administrative review decisions issued by the Director of DHRM and EDR are final and not appealable. If the DHRM Director or EDR orders the Hearing Officer to reconsider the hearing decision, the Hearing Officer must do so. If request for administrative review have been made to both the DHRM Director and EDR, the Hearing Officer need not reconsider his/her decision, if ordered to do so on remand, until both administrative reviews are issued or otherwise concluded unless otherwise directed by

EDR in the interest of procedural efficiency. If requests for administrative review have been made to both the Director of DHRM and EDR, EDR shall generally respond first. Administrative reviews by the Director of DHRM should be issued within thirty calendar days of the conclusion of any other administrative reviews.

Final Hearing Decision. A Hearing Officer's original decision becomes a final hearing decision, with no further possibility of administrative review, when:

1. The 15 calendar day period for filing requests for administrative review has expired and neither party has filed such a request; or
2. All timely requests for administrative review have been decided and, if ordered by EDR or DHRM, the Hearing Officer has issued a revised decision.

Judicial Review of Final Hearing Decision: Once an original hearing decision becomes final, either party may seek review by the Circuit Court on the ground that the final hearing decision is contradictory to law. Neither the Hearing Officer nor the Department of Human Resources Management (or any employee thereof) shall be named as a party in such an appeal.

An employee does not need EDR's approval before filing a notice of appeal. However, an agency must request and receive approval from EDR before filing a notice of appeal. To request approval to appeal, an agency must, within 10 calendar days of the final hearing decision, submit a written request to EDR and must specify the legal basis for the appeal. The request for approval to appeal must be received by EDR within 10 calendar days, which means delivered to, not merely postmarked or placed in the hands of a delivery service. The agency may make its request by email or fax. The agency must provide a copy of its appeal request to the employee. EDR will provide a response within 10 calendar days of the agency's request.

A notice of appeal must be filed with the Clerk of the Circuit Court in the jurisdiction in which the grievance arose within 30 calendar days of the final hearing decision. At the time of filing, a copy of the notice of appeal must be provided to the other party and EDR. The judicial review procedure shall be as more particularly set out in the Grievance Procedure Manual.

John R. Hooe, III
Hearing Officer